

## **Memorandum**

Subject: Proposed referral to the Council on Environmental Quality of the U.S. Forest Service's Environmental Impact Statement for the Rosemont Copper Mine, Arizona

From: Cynthia Giles, Assistant Administrator

To: Gina McCarthy, Administrator

**Action:** Your approval of the proposed referral to the Council on Environmental Quality of the U.S. Forest Service's Environmental Impact Statement for the Rosemont Copper Mine, Arizona (see Attachment A - project area map). CEQ's regulations require that a referral be submitted no later than 25 days after the notice of availability of the Final EIS; therefore, [DATE] is the deadline for referring this matter to CEQ.

In preparing the referral letter, we have worked closely with Region 9 and the Office of Water. In addition, the Office of General Counsel believes the referral falls within EPA's authorities under Section 309 of the Clean Air Act.

Attached for your signature is a letter to the Chair of CEQ, setting forth the basis of EPA's determination, and a letter to the Secretary of Agriculture informing him of the referral (see Attachment B - referral letter).

**Background:** The Rosemont Copper Mine, a proposed new open pit mine, would be located on 4,750 acres of predominantly Coronado National Forest lands and within the Cienega Creek watershed, which contains regionally rare, largely intact mosaics of some of the highest quality stream and wetland ecosystems in Arizona. The proposed project would eliminate 42.5 acres (18 linear miles) of desert streams and most of the ecological functions and services attributed to the project watershed area, and result in persistent degradation of habitat for ten federally listed species. Ensuing indirect impacts to hundreds of acres of seep, spring and riparian habitats from groundwater drawdown would occur on a watershed scale, conservatively estimated at 40,000 to 60,000 acres. In addition, the project would degrade State-designated downstream "Outstanding Arizona Waters" subject to Clean Water Act §303 Tier 3 "anti-degradation" water quality standards, have significant adverse impacts on tribal and environmental justice communities, and degrade regional visibility and increase airborne nitrogen in Saguaro National Park (a Class 1 area) -- statutory exceedences which could negate the benefits of costly nearby generating facility retrofits EPA recently required to reduce visibility impacts.

The Forest Service is the federal lead agency, and the Army Corps of Engineers is a cooperating agency seeking to adopt the Forest Service's Record of Decision for its CWA §404 permit decision. On February 21, 2012, EPA rated the Draft EIS "EU-3."

**Basis for Referral:** Based on EPA's careful review of project information, we find that the proposed project is environmentally unsatisfactory for the following reasons:

- The project would result in significant degradation of waters of the United States in violation of 40 CFR 230.10(b), (c) and (d) of the *Federal Guidelines for Specification of Disposal Sites for Dredged or Fill Materials* ("Guidelines"), including three types of Special Aquatic Sites (wetlands, sanctuaries and refuges, and riffle and pool complexes), as well as Tier 3 "unique waters" designated by the State of Arizona as "Outstanding Arizona Waters." In addition, EPA identified these waters as "Aquatic Resources of National Importance" pursuant to the EPA-Corps Memorandum of Agreement for implementing CWA 404(q).
- Direct impacts from the proposed project include fill of 40 acres of waters, for which inadequate compensatory mitigation has been proposed. Secondary impacts to surface waters resulting from groundwater drawdown have not been fully assessed, as required under the Guidelines, but we estimate that hundreds of acres of seep, spring and riparian habitats could be destroyed; however, no mitigation is proposed for these impacts. Direct and indirect loss of waters of the U.S. would endure for hundreds of years in some cases and in perpetuity for others.
- The Corps, Forest Service, applicant, and EPA have pursued numerous avenues for identifying environmentally preferable alternatives; however, no feasible alternative significantly reduces the impacts without equal or greater offsetting environmental harm.

**Positions of Interested Parties:**